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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of Telecommunications Services Inside Wiring Customer Premises Equipment	CS Docket No. 95-184
In the matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Cable Home Wiring	MM Docket No. 92-260

COMMENTS OF AMERITECH IN RESPONSE TO PETITIONS FOR RECONSIDERATION

Ameritech New Media, Inc. (hereinafter "Ameritech")[1] hereby responds to some of the issues raised in various Petitions for Reconsideration filed in regard to the new rules recently adopted by the Commission in its Report and Order in the above-referenced proceedings[2] (hereinafter "Order") pertaining to cable inside wiring installed in

[1] Ameritech New Media, Inc., is a subsidiary of Ameritech Corporation. It began providing competitive MVPD service to customers in May 1996 and currently has franchises in 65 communities in the Chicago, Detroit, Cleveland, and Columbus area markets.

[2] FCC 97-376, released Oct. 17, 1997.

multiple dwelling unit ("MDU") buildings by multichannel video programming distributors ("MVPDs"). In its own Petition for Reconsideration, Ameritech asserted that the operation of the Commission's unit-by-unit notification and incumbent election rules will be too slow to encourage vigorous competition. Ameritech also said that the rules for accessing individual subscriber units should be revised to ensure that service transitions are transparent to the customer by requiring the incumbent to make each customer's home run inside wire potentially accessible to new competitors at the same time the incumbent announces its decision to sell or abandon its home run wire.[3] In regard to the Petitions for Reconsideration filed by other parties, Ameritech opposes the incumbents' contention that state mandatory access statutes should be able to thwart application of the Commission's new rules. In addition, it opposes claims that the rules should preempt the operation of those state statutes. Also, Ameritech supports the petitioners who claim that the incumbent's right to burden the MDU owner by the physical removal of its inside wire should be eliminated, and it supports the petitions seeking to have the Commission establish a default sale price for home runinside wire. On the other hand, Ameritech disagrees with petitioners who advocate

[3] Support for Ameritech's concern about shortening the unit-by-unit time frame and establishing a seamless changeover of service providers is found, *inter alia*, in the Petitions for Rehearing of the Wireless Cable Association (pp. 15–17) and DIRECTV (p. 5).

formal written arrangements in an effort to prevent telephone-style "slamming."

I. The Commission's New Rules Should Not Be Defeated By State Mandatory Access Statutes.

Several parties, prominently including Time Warner (pp. 8–9), assert that the Commission's new rules should automatically not apply in states that have mandatory access statutes. Ameritech, however, submits that there can be no policy basis for such a reading, for there is utterly no reason to suppose that merely by enacting a mandatory access law, a state has adopted a policy favoring monopoly cable service. Yet Time Warner, wholly ignoring such policy considerations and common sense as well, points to a distorted reading of the new rules whereby such an unsound result might be compelled by a mere technicality. This point arises from the fact that the new unit-by-unit rule for the disposition of home run wiring (for example) applies only when the incumbent "does not . . . have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes . . .".

Such a "legally enforceable right" might arise, of course, from a private agreement between the incumbent MVPD and the MDU owner excluding any other MVPD from placing its cable in the building. (Indeed, of course, it is the validity of such private exclusive agreements that is the subject of the next phase of these proceedings.) On

the other hand, according to Time Warner, another source of such a "legally enforceable right" might be a state's mandatory access statute; the technical argument advanced by Time Warner is that because a state's mandatory access statute will *always* give the incumbent *some* right to remain on the premises, it must follow that the Commission's new home run wire disposition rules will automatically not apply in any of such states.

This strange outcome should be avoided at all costs. Its effect would most certainly be to convert state mandatory access statutes into monopolistic devices. But even under the most exaggerated interpretation of the law that might be made in the most incumbent-friendly state, there is no way to read a mandatory-access statute to *prohibit* the MDU owner from *voluntarily* allowing a second cable provider to occupy the MDU premises and serve its residents competitively — which is exactly the situation the Commission's rules were designed for. Yet that outcome would be forbidden under Time Warner's claim that the mere existence of a mandatory access statute is enough to defeat the application of the Commission's rules for the disposition of cable home run wiring. This result is so highly undesirable, and so contrary to the overall thrust of this proceeding, that if it really were the case that the language compels this outcome,

result, even at this late stage of the proceedings.[4] At the very least, the Commission should make clear that Time Warner's comments are dead wrong; the mere existence of a state mandatory access statute should by no means render the Commission's rules inoperative.

At the opposite extreme, however, neither should the Commission's rules render the state mandatory access statutes inoperative. The real purpose of state mandatory access statutes is to ensure customers have access to cable television providers. Accordingly, mandatory access statutes are pro-consumer, and often facilitate entry by a second cable operator. Therefore, Ameritech does not support the alternative providers whose petitions ask the Commission to preempt state mandatory access statutes.

II. The Incumbent's Right To Remove Its Inside Wire Should Be Eliminated.

The comments of the Wireless Cable Association and the Media Access Project, among others, vividly spell out that when an incumbent cable provider receives notice of the presence of a building-by-building or unit-by-unit cable competitor, the incumbent's potential option to remove its inside wire — instead of selling it or abandoning it in place

[4] Ameritech believes that if any change in the language is necessary, it should be changed to say that the Commission's rule applies whenever the incumbent's right to remain on the MDU premises is based solely on a mandatory access statute.

— has a chilling effect upon MDU owners. Those owners will be reluctant to authorize a competing service if the result might be that their premises are going to be disrupted by a careless (or even spiteful) removal. The MDU owner's difficulties are compounded by the fact that there is no way under the Rules to compel the incumbent to announce its choice of removing, selling, or abandoning *prior to* the MDU owner's decision to allow competition. Furthermore, there is, on the other hand, nothing in the Rules that would *prevent* the incumbent MVPD, far in advance of the appearance of any competitor, and without even being asked, from proclaiming its determination to remove its wire with maximum vengefulness if any competition ever appears. Nor is there anything that would indicate to the MDU owner whether or not such an incumbent might just be bluffing. Thus the Commission should eliminate removal from the incumbent's initial list of choices, just as the Wireless Cable Association and the Media Access Project have proposed.[5]

III. The Commission Should Establish a Default Price for Inside Wire.

DIRECT (pp.4–5) asserts that the Commission should reconsider its decision to allow the price of the incumbent's inside wire to be set

[5] Only if the MDU owner has refused to purchase the wire should the incumbent have the right to remove it.

by negotiation and arbitration. It suggests instead that MDU owners be granted the right to purchase home run wiring for salvage or replacement value, which would be consistent with the earlier determination to allow single-unit subscribers to buy their cable home wire at wholesale replacement value. Ameritech supports this position. In Ameritech New Media's experience, without a set mechanism for valuation on the wire, incumbents come into negotiations with an unreasonably high initial price.[6] The negotiation and arbitration process will inject nothing but delay, and will therefore operate anticompetitively, since delay always favors the incumbent provider.

IV. Proposals Designed To Deter "Slamming" Should Be Rejected.

Several commenters have proposed various formal requirements designed to deter "slamming." *i.e.*, the unauthorized changing of a cable subscriber's choice of cable provider. Thus Time Warner asserts that consent in writing be obtained from the subscriber for any change

[6] Thus, in a recent example (December 1997), an incumbent operator offered to sell its inside wiring to the MDU for $46,000 (or $240 per unit). The MDU declined, largely because installing inside wiring in a building costs about $75 (labor and materials) per unit. The incumbent likely thinks that starting with an absurdly high amount will ensure that it gets more than it is entitled to from the MDU owner, who is probably disinclined to devote much time to arbitrating such matters. Moreover, for the novice MDU owner, such an offer might have the effect of dissuading him from even considering competition in his MDU.

in provider, or in order to establish an agency relationship between the customer and a provider. These proposals, however, blithely assume that "slamming" of cable customers would otherwise blossom into a problem of the same magnitude as in the case of long-distance telephone service. Ameritech submits that MVPD service does not present the same opportunities for "slamming" as telephone service, and accordingly it urges the Commission to reject these proposals. Thus the only object that would be achieved by adopting any of the anti-slamming measures wouild be the anticompetitive deterrence of end users from abandoning the incumbent provider.

The primary reason that "slamming" is possible in the telephone business is that a change in telephone providers is almost invisible to the end user: there is no need for a visit to the customer's home to effectuate a change of long distance carrier, and nothing else to signal the transition from one carrier to another. For these reasons, it is usually the case that the telephone customer is not made aware of an unauthorized change until the first bill is received for the new carrier's services (and even then the change may go unnoticed). In the case of cable services, however, there is almost always a need for a visit to the customer's premises (primarily to change the converter box). Moreover, as soon as the customer switches on the TV, he or she cannot fail to notice that the new provider has a different channel lineup. Thus it is unlikely that an unauthorized change in cable pro-

viders would go unnoticed for any length of time, and there is no need whatsoever for the type of protections against "slamming" proposed by the commenters.

V. Conclusion.

For the above and foregoing reasons, Ameritech New Media submits that the Commission's new rules should be amended or clarified on reconsideration to make the new rules applicable independent of the existence of mandatory access statutes in particular states, to eliminate the incumbent MVPD's election to remove its inside wire, and also to establish a default price for the sale of cable inside wire. However, no further amendment of the rules to reduce "slamming" is necessary.

Respectfully submitted,

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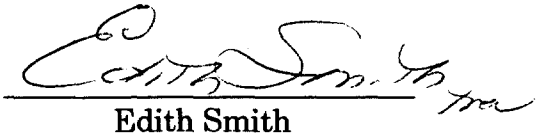
January 15, 1998

CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of Comments of Ameritech has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 15th day of January, 1998.

By: 

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